that he is not entitled to reformation of the master's deed. *Fisher* v. *Villamil*, 56 So. 559 (Fla.).

A mutual mistake in drawing a mortgage, whereby the wrong land is designated, gives the mortgagee an equity to have the mortgage reformed. If the purchaser at the foreclosure sale acts under the same mistake, his misapprehension and the error of the mortgagor and the mortgagee in the mortgage authorizing the sale may be said to constitute a mutual mistake. The mortgagee's equity of reformation is therefore kept alive and passes to the purchaser, and thus the purchaser gets an equity of reformation against the mortgagor. He should be able to enforce this equity by getting reformation of the mortgage and the sheriff's deed, — or, if the court dislikes to reform a judicial proceeding, by getting a conveyance, having the effect of reformation, — provided that this is fair to the mortgagor. *Quivey* v. *Baker*, 37 Cal. 465; *Waldron* v. *Letson*, 15 N. J. Eq. 126. *Contra*, *Miller* v. *Kolb*, 47 Ind. 220. But if owing to the mistake the land was not sold for all that the right land might have brought, the buyer should be allowed to get reformation of the mortgage and rescission of the sheriff's sale, and a new foreclosure should be had. *Conyers* v. *Mericles*, 75 Ind. 443; *Blodgett* v. *Hobart*, 18 Vt. 414. *Contra*, *Stephenson* v. *Harris*, 131 Ala. 470, 31 So. 445.

RESCISSION — RESCISSION UPON OTHER PARTY'S BREACH, REPUDIATION, OR INABILITY TO PERFORM — FORFEITURE OF DEPOSIT.— The defendant agreed in writing to purchase land of the plaintiff for £2450, of which £50 was to be paid as a deposit to the plaintiff's solicitors, as stakeholders. The contract made no provision as to the disposition of the deposit in the event of the purchaser's default. The deposit was paid, but the defendant neglected to pay the balance of the price, and an order was made rescinding the contract. *Held*, that the deposit is forfeited to the plaintiff. *Hall* v. *Burnell*, [1911] 2 Ch. 551.

When a contract of sale stipulates that part of the purchase price is to be paid down as a deposit and forfeited to the vendor in case of failure to pay the balance, the latter can recover the deposit on the purchaser's default. *Collins* v. *Stimson*, 11 Q. B. D. 142; *Thompson* v. *Kelly*, 101 Mass. 291. When no provision is made for the disposition of the deposit, the intent of the parties is to be judged from the whole contract, and if any term is inconsistent with the vendor's retention of the deposit, it must be returned. *Palmer* v. *Temple*, 9 A. & E. 508. It is submitted that the relative size of the deposit and purchase price should be regarded as evidence as to whether a forfeiture was contemplated in case of failure to pay the balance. If no evidence as to the disposition of deposit can be gathered, the vendor may retain it, even though he has rescinded the contract or asks simultaneously for its rescission. *Howe* v. *Smith*, 27 Ch. D. 89; *Dunn* v. *Vere*, 19 Wkly. Rep. 151. *Contra*, *Jackson* v. *De Kadish*, [1904] Wkly. Notes 168. The principal case, following these decisions, shows a tendency to depart from the strict English rule that there can be no rescission unless all benefits acquired under the contract are returned. *Cf. Hunt* v. *Silk*, 5 East 449; *Blackburn* v. *Smith*, 2 Exch. 783.

RESTRAINT OF TRADE — COMBINATION BY AGREEMENTS AS TO PRODUCT OR PRICES — PATENTED ARTICLES. — The patentee of a dredger, useful but not indispensable in making enameled bathtubs, licensed four-fifths of the manufacturers of such ware to use it in return for their agreements to resell the unpatented bathtubs at certain prices, and only to designated jobbers, who in turn agreed to maintain non-competitive prices. *Held*, that the contracts constitute an illegal combination under the Sherman Anti-Trust Act. *United States* v. *Standard Sanitary Mfg. Co.*, 191 Fed. 172 (Circ. Ct., D. Md.) See NOTES, p. 454.

SALES — CONDITIONAL SALES — EFFECT ON SELLER'S TITLE OF TRANSFER OF NOTE GIVEN FOR PRICE. — Under a contract of conditional sale, the plaintiff delivered an automobile, and took a promissory note for the unpaid balance of the price. He assigned the note to a bank, as collateral security for a loan. *Held*, that the assignment of the note vested an absolute title in the buyer. *Winton Motor Carriage Co.* v. *Broadway Automobile Co.*, 118 Pac. 817 (Wash.). See NOTES, p. 462.

SPECIFIC PERFORMANCE — LEGAL CONSEQUENCES OF RIGHT OF SPECIFIC PERFORMANCE — EFFECT OF OPTION TO PURCHASE. — A. leased land to B., giving him an option to purchase at any time within five years on notifying A. or "his legal representative." A. died intestate, and B. notified A.'s administratrix of his intention to exercise his option. *Held*, that this notice is sufficient. *Rockland-Rockport Lime Co.* v. *Leary*, 203 N. Y. 469.

This case, although affirming the decision of the Appellate Division on the ground that the phrase "legal representative" in the option meant the administratrix, expresses a strong opinion that the lower court was in error in regarding the option as working an equitable conversion *ab initio*. See 23 HARV. L. REV. 70.

STATUTE OF FRAUDS — PART PERFORMANCE — RETENTION OF POSSESSION. — The plaintiff, while in possession of land of the defendant's testator as tenant at will, made an oral contract with him for the purchase of the land and continued in possession. *Held*, that the retention of possession renders evidence of the parol contract admissible, and if possession was retained under the contract, the plaintiff is entitled to specific performance. *O'Donnell* v. *O'Donnell*, 11 N. S. W. 340 (C. J. in Eq.).

The general rule unquestionably is that equity will take an oral agreement for the sale of land out of the Statute of Frauds on the ground of part performance only when the acts of part performance are referable exclusively to the existence of an agreement for the transfer of an interest in that land. *Frame* v. *Dawson*, 14 Ves. Jr. 386; *Phillips* v. *Thompson*, 1 Johns. Ch. (N. Y.) 131. The reason assigned for this requirement is that acts which might have been done with another view cannot properly be said to be done by way of part performance of the alleged agreement. See 2 STORY, EQUITY JURISPRUDENCE, 13 ed., § 762. In applying the rule, the distinction almost universally made between the act of taking and that of merely continuing to hold possession seems sound on principle, the latter act, if unaccompanied by other circumstances, being clearly equivocal. *Emmel* v. *Hayes*, 102 Mo. 186, 14 S. W. 209. See *Wills* v. *Stradling*, 3 Ves. Jr. 378, 381; *Morphett* v. *Jones*, 1 Swanst. 172, 181. The decision in the present case, therefore, would seem to be difficult of justification, since, while sanctioning and professing to follow cases which adopt the general rule, it not only repudiates the above distinction, but lays down a principle inconsistent with the reason on which the general rule is based.

STATUTES — IMPEACHMENT OF STATUTES — READING AND RECONSIDERATION. — A state constitution required that every bill be read on three different days in each house. The Senate rules provided that a motion to reconsider any bill could be made within two days after its passage. Bills identical in title and matter were introduced in both houses simultaneously. The House bill after passage was substituted for the Senate bill at its third reading. The Senate passed it, reported its passage to the House, and sent it to a joint committee for transmission to the Governor. Within two days the Senate moved to reconsider the bill, but failed to regain possession of it from either the House, the Governor, or the Secretary of State. *Held*, that the bill is now law. *Smith* v. *Mitchell*, 72 S. E. 755 (W. Va.).